A.F.R.
24.8.07

(12)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Single Bench : Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Miscellaneous Appeal (c) No.22 of 2007

Appellant

Birjha Bai W/o Late Kartik Ram
Aged about 45 years
R/o Village Samoda, Post Karanjai, Bhilai, Tahsil & District Durg (C.G.)

versus

Respondents

1. Beduram Sinha
S/o Unknown, R/o Village Chikhli, P.S. Mohan Nagar, Durg, District Durg, (C.G.)
Through: Goverdhan Sahu
S/o Chowaram R/o Village Karhidih, Tahsil and District Durg (C.G.)

Occupation-Tractor Driver
Tractor No.C.G.-04/ZQ/4490 &
Trolley No.C.G.-04/ZQ/4491

2. Goverdhan Sahu
S/o Chowaram R/o Village Karhidih, Tahsil and District Durg (C.G.)
Occupation-Tractor Owner
Tractor No.C.G.-04/ZQ/4490 &
Trolley No.C.G.-04/ZQ/4491

3. The Oriental Insurance Company
Through: Divisional Manager, Malwiya Nagar, Durg, Tahsil and District Durg (C.G.)
Insurer Company:
Tractor No.C.G.-04/ZQ/4490 &
Trolley No.C.G.-04/ZQ/4491

Miscellaneous Appeal under Section 173 of Motor Vehicle Act

Present : Shri Santosh Yadu, counsel for the appellant.
No one appears on behalf of respondents No.1 to 3, though served and vakalatnama filed on their behalf.

ORAL ORDER
(Passed on 24th August, 2007)

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The appeal was finally heard today.

(2) The appellant is aggrieved by the award dated 26-08-2006 passed by the 10th Additional Motor Accidents Claims Tribunal, (F.T.C.), Durg (henceforth the M.A.C.T.) in claim case No.132/2005 whereby the compensation of Rs.2,20,000/- has been awarded for the accidental death of Kartik Ram, aged 55 years.

(3) The M.A.C.T. assessed the monthly income of the deceased at Rs.3,000/- per month. Considering the fact that the widow was the sole claimant, the M.A.C.T. deducted ½ towards personal expenses of the deceased and assessed the loss of yearly dependency at Rs.1500x12=18,000/-. Applying multiplier of 11, total loss of dependency was assessed at 18,000x 11=1,98,000/-. Adding to it a further consolidated sum of Rs.22,000/- under various conventional heads, the M.A.C.T. awarded Rs.2,20,000/- as compensation.

(4) Learned counsel for the appellant submitted that the compensation awarded by the M.A.C.T. has been deposited by the insurance company and received by the claimant.

(5) The sole ground urged by learned counsel for the appellant in this appeal is that the M.A.C.T. ought to have deducted 1/3rd of the monthly income of the deceased towards personal expenses. No other ground was urged.

(6) No one appeared for the owner, driver and insurance company at the time of final hearing.

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(7) Having considered the submission of learned counsel for the appellant, I have perused the record. On the date of accident, claimant Birjha Bai was the sole dependent on the deceased, being his widow. Deduction of 1/3rd of the monthly income of the deceased towards his personal expenses is not only a rule of prudence but is also in conformity with the second schedule appended to the Motor Vehicles Act, 1988 wherein it has been specifically provided that the amount of compensation so arrived at in the case of fatal accident claims shall be reduced by 1/3rd in consideration of the expenses which the victim would have incurred towards maintaining himself had he been alive. Deduction towards personal living expenses of the deceased depends upon various factors. In **General Manager, Kerala State Road Transport Corporation, Trivandrum vs. Mrs. Susamma Thomas and others AIR 1994 SC 1631** it was held that in the absence of evidence of the nature of expenditure which the deceased incurred on the dependents on the house hold, it would not be unusual to deduct 1/3rd of the gross income towards the personal living expenses and treat the balance as the amount likely to have been spent on the member of the family. In **Sarla Dixit and another vs. Balwant Yadav and others 1996 ACJ 581,** the Apex Court had while assessing loss of dependency deducted 1/3rd of the gross monthly income towards personal expenses. Where there are only two spouses in the family, the husband does not necessarily spend ½ of the monthly income only towards his personal expenses. Some amount is spent towards maintaining the household and other incidental expenses besides the personal expenses to be incurred by the remaining spouse. Monthly income of the earning member of the family not only includes the personal expenses incurred by the earning member but also by the spouse as also the expenses for maintaining the household and other incidental expenses. Therefore, in this case the

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approach of the M.A.C.T. in deducting ½ of the monthly income of the deceased towards his personal expenses was wholly incorrect because the monthly income has to be split into three parts; first for personal expenses of the deceased, second for personal expenses of the other spouse and lastly towards expenses for maintaining the household and other incidental expenses. In this view of the matter, the M.A.C.T. erred in deducting half of the monthly income of the deceased towards his personal expenses. Taking personal expenses of the deceased at 1/3rd of the monthly income, loss of monthly dependency comes to Rs.3000-1000=2000. Multiplying it by 12, loss of yearly dependency is assessed at Rs.24,000/-. Applying the multiplier of 11, total loss of dependency comes to Rs.2,64,000/- (24,000x11=2,64,000/-). Adding to this, a sum of Rs.22,000/- awarded under various conventional heads, total compensation is arrived at Rs.2,86,000/-.

(8) In the result, the appeal is allowed. Compensation awarded by the M.A.C.T. is enhanced to Rs.2,86,000/-. After adjusting the amount of compensation already paid, the remaining compensation shall be paid by the respondent No.3/insurance company within a period of two months from today, failing which, the insurance company shall also be liable to pay interest @ 8.5% per annum from the date of application till realisation.

(9) A copy of this order be sent to the M.A.C.T. forthwith. The M.A.C.T. shall on deposit of compensation ensure:

(A) that the claimant/appellant is noticed about the award and to appear before the M.A.C.T., in person along with her pass book of an account in a nationalized bank,

(B) that the pass book of the claimant is accompanied by the photograph and is duly verified by the bank and the same is also verified by the M.A.C.T. before issuance of cheque,

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(C) that a direction is issued to the concerned bank not to release the amount in favour of any person, other than the claimant unless ordered by the M.A.C.T.

Sd/-
Dilip Raosaheb Deshmukh
Judge